IN THE MATTER OF THE CLAIM	*	**BEFORE MICHELLE W. COLE,**
OF VALERIE MADDY,	*	**AN ADMINISTRATIVE LAW JUDGE**
CLAIMANT	*	**OF THE MARYLAND OFFICE**
AGAINST THE MARYLAND HOME	*	**OF ADMINISTRATIVE HEARINGS**
IMPROVEMENT GUARANTY FUND	*	
FOR THE ALLEGED ACTS OR	*	
OMISSIONS OF ROBERT MORANO,	*	
T/A MORANO HOME	*	**OAH No.: LABOR-HIC-02-21-19672**
ENHANCEMENTS, INC.,	*	**MHIC No.: 21 (75) 335**
RESPONDENT	*	

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PROPOSED DECISION

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STATEMENT OF THE CASE

On March 2, 2021, Valerie Maddy (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of $7,885.00 for actual losses allegedly suffered as a result of a home improvement contract with Robert Morano, trading as Morano Home Enhancements, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2015).[1]

[1] Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

On August 2, 2021, the MHIC issued a Hearing Order on the Claim. On August 27, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On November 3, 2021, I held a hearing at the OAH in Hunt Valley, Maryland.[2] Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312. Andrew Brouwer, Assistant Attorney General, Department, represented the Fund. Brian Greuter, Esquire, represented the Claimant, who was present. The Respondent failed to appear for the hearing.

Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. Code of Maryland Regulations (COMAR) 28.02.01.23A. On September 20, 2021, the OAH provided a Notice of Hearing (Notice) to the Respondent by standard and certified United States mail to the Respondent's address on record with the OAH. COMAR 09.08.03.03A(2); COMAR 28.02.01.05C(1). The Notice stated that a hearing was scheduled for November 3, 2021, at 9:30 a.m., at the OAH. The Notice further advised the Respondent that failure to attend the hearing might result in "a decision against you."

The Notice sent by standard mail delivery was returned to the OAH, stamped: "Return to Sender Unclaimed Unable to Forward." However, the Notice sent by certified mail was marked received by "R. Morano" on September 24, 2021. The Respondent did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. The Respondent made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter. COMAR 28.02.01.05A, C.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; COMAR 28.02.01.

[2] The hearing scheduled for October 1, 2021, was postponed for good cause established by the Claimant.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of an unworkmanlike, inadequate or incomplete home improvement by the Respondent?

2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered by the Claimant:

Cl. Ex. A Contract, October 1, 2019

Cl. Ex. B Results for Active Licensed Home Improvement, August 14, 2020, November 1, 2021

Cl. Ex. C Copy of Check to the Respondent, October 12, 2019; Capital One Bill Pay Printout, September 29, 2020

Cl. Ex. D Emails from the Claimant to the Respondent, January 12, 2020, January 17, 2020, and February 22, 2020

Cl. Ex. E Emails from John Zinn to the Claimant, June 15, 2019, June 17, 2019, and June 22, 2019; Results for Active Licensed Home Improvement, November 1, 2021

Cl. Ex. F Home Improvement Claim Form, February 21, 2021; Complaint Form, September 29, 2020

The Respondent did not offer any exhibits for admission into evidence.

I admitted the following exhibits offered by the Fund:

Fund Ex. 1 Hearing Order, August 2, 2021

Fund Ex. 2 Notice of Hearing, September 20, 2021

Fund Ex. 3 Notice of Hearing, August 31, 2021

Fund Ex. 4 Letter from the MHIC to the Respondent, March 2, 2021; Home Improvement Claim Form, February 21, 2021

Fund Ex. 5 Licensing Registration Inquiry, September 24, 2021

Testimony

The Claimant testified and did not present other witnesses. The Respondent did not offer any witness testimony. The Fund did not offer any witness testimony.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under the MHIC.

2. In June 2019, the Claimant contacted John Zinn, a contractor licensed under the MHIC, and requested that he perform repairs at the Claimant's Mount Airy property (Property).[3] Mr. Zinn indicated that he could not perform the repairs at the time of the Claimant's request and referred the Claimant to the Respondent. He provided rough estimates[4] for repairs in the amount of $7,200.00 as follows:

Installation of laundry room door	$600.00
Installation of laundry room flooring	$600.00 - $700.00
Repairs to exterior siding	$800.00
Repairs to FR[5] flooring	$800.00 - $1,000.00
Kitchen sink cabinet repairs	$500.00
Drywall repairs	$600.00
Installation of water heater	$1,200.00 - $1,500.00
Rebuilding of front stairs	$1,000.00 - $1,500.00

(Cl. Ex. E).

[3] The Property was one of three rental properties owned by the Claimant at the time of the Contract.
[4] Mr. Zinn indicated that additional costs may be incurred depending on what additional damage existed underneath the siding and flooring.
[5] There was no testimony to explain what "FR" represented.

3. On October 1, 2019, the Claimant and the Respondent entered into a contract (Contract) to make repairs to the Property.[6]

4. Under the Contract, the Respondent agreed to perform the following work:

- Remove and replace existing laundry room 32" nine lite exterior door with new 32" nine lite steel exterior door with frame saver jambs and PVC brick molding. Existing doorknob will be installed on new door.
- Remove and replace existing laundry room floor with new vinyl floor. Allotment of $2.00 per square foot included in total price. Homeowner to select vinyl color from Home Depot.
- Remove and replace damaged garage ceiling drywall with new drywall. New drywall will be spackled, sanded, primed, and new area painted. Homeowner/Tenant to provide most recent paint color information.
- Remove existing 36" kitchen sink base cabinet. Secure sink properly to granite. Provide and install new 36" sink base cabinet best available match. Homeowner agrees that install of new cabinet and securing sink will be completed while existing granite is in place. If granite section is damaged during install of cabinet or sink, a new section of granite will be needed at Homeowner's expense.
- Remove and replace existing damaged family room hardwood flooring (approx. 80 sq. ft.). Remove and replace any damaged subfloor.
- Remove and replace existing family room double door with two active panels. Existing active side will remain active, other panel can be opened as needed using astragal slide locks.
- Remove siding around family room half round window and door flash properly as needed.
- Remove and replace glass in family room half round window.
- Prime and spot paint upstairs ceiling spot from previous leak. Homeowner/Tenant to provide most recent paint color information.
- Remove and replace damaged drywall on basement ceiling from family room leak. New drywall will be spackled, sanded, primed and spot painted. Homeowner/Tenant to provide most recent paint color information.
- Replace existing electric water heater with A.O. Smith commercial grade electric water heater.
- Remove and replace existing broken 6" x 6" tile in basement bathroom.
- Remove existing front stair and riser boards, railings. Install new pressure treated stair and riser boards. Repair posts. Install railings. Repair framing issue (loose board) on porch by steps.
- Scrape existing front porch where paint is loose. Repaint porch where scraped and new front steps and risers with matching color. Homeowner/Tenant to provide most recent paint color information.

[6] The Respondent also performed work under a separate contract to replace the roof at the Property. All work was completed on the roof in December 2019 and the Claimant does not complain about the Respondent's work in this area.

- Remove and replace existing wood columns with white PVC columns. Reinstall existing level railings.

(Cl. Ex. A).

5. The original agreed-upon Contract price was $17,985.00.

6. The Contract stated that work would begin in October 2019. It did not provide a date of completion for the Respondent's work.

7. The Claimant made two payments to the Respondent: $5,995.00 on October 10, 2019; and $3,990.00 on October 12, 2019 ($5,995.00 + $3,990.00 = $9,985.00).

8. The Respondent started working at the Property in November 2019. He performed work on the front stairs, but did not paint or install the columns. He removed the damaged drywall and installed new drywall.

9. The Respondent stopped working at the Property sometime in late November or early December 2019.

10. During November 2019 and December 2019, tenants were living at the Property and scheduled activities which prevented the Respondent from working at the Property. Weather and the COVID-19 pandemic also later contributed to delays.

11. Beginning in January 2020, the Claimant attempted to contact the Respondent by telephone and email regarding completion of the work under the Contract. The Respondent did not respond to the emails and spoke with the Claimant only a few times by telephone. When the Claimant spoke with the Respondent in May or June 2020 and asked for a detailed summary of work in order to settle the matter with the Respondent, the Respondent hung up on the Claimant.

12. The Claimant hired Craftmasters to complete the remaining work under the Contract and to perform additional work.

13. On September 20, 2021, the OAH provided a Notice to the Respondent by standard and certified mail to the Respondent's address on record with the OAH informing the Respondent of the date, time, and location of the hearing.

14. The Notice sent by certified mail was marked received by "R. Morano" on September 24, 2021.

15. Prior to the hearing, the Respondent did not notify the OAH of any change of mailing address or request a postponement.

DISCUSSION

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor." Md. Code Ann., Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor."). "'[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Md. Code Ann., Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

Actual Loss – Prima Facie Impediments

Certain claimants are excluded from recovering from the Fund altogether. In this regard, a claimant must prove that: (1) the claimant resides in the home as to which the claim is made, or

owns no more than three dwelling places; (2) the claimant is not an employee, officer or partner of the contractor; or the spouse or other immediate relative of the contractor or the contractor's employees, officers or partners; (3) the work at issue did not involve new home construction; (4) the claimant did not unreasonably reject the contractor's good faith effort to resolve the claim; (5) the claimant complied with any contractual arbitration clause before seeking compensation from the Fund; (6) there is no pending claim for the same loss in any court of competent jurisdiction and the claimant did not recover for the actual loss from any source; and (7) the claimant filed the claim with the MHIC within three years of the date the claimant knew, or with reasonable diligence should have known, of the loss or damage. Md. Code Ann., Bus. Reg. §§ 8-405(c), (d), (f), (g), 8-408(b)(1); Md. Code Ann., Bus. Reg. § 8-101(g)(3)(i) (Supp. 2021).

The undisputed evidence in this case establishes there are no prima facie impediments barring the Claimant from recovering from the Fund. There is no argument to the contrary, and the evidence establishes that the Claimant owned the residential home as to which the claim is made; that she owned no more than three dwelling properties in Maryland at the time of the Contract; that she has never been an employee, officer or partner of the Respondent and is not related to any of the Respondent's employees, officers or partners; that the home improvement was not new home construction; that the Claimant did not reject any good faith effort by the Respondent to resolve the claim or fail to participate in arbitration; that the Claimant has not taken any other legal action to recover monies for any actual loss in connection with the Respondent's work; and the Claimant timely filed her claim within three years of the date she became aware of the problems with the home improvement work. Finally, at all times relevant to this matter, the Respondent was a licensed home improvement contractor under the MHIC. Accordingly, I find that the Claimant is not precluded from recovering from the Fund.

Actual Loss - Unworkmanlike, Inadequate, or Incomplete Home Improvement by the Respondent

The Claimant presented evidence showing that she entered into the Contract with the Respondent to perform repairs of the Claimant's Property. At that time, the Respondent held a valid MHIC license. The Claimant testified that the Respondent performed limited work and abandoned the project before completing all work under the Contract.

I find that the Claimant has met her burden to show an incomplete home improvement. The Claimant presented evidence showing that the Respondent completed only the front porch stairs and drywall. In an email to the Respondent, the Claimant listed the remaining work under the Contract at the time that the Respondent stopped working, including: removing and replacing the laundry room doors, molding, and flooring; removing the kitchen sink cabinet; securing the sink to the granite; removing and replacing the family room doors, subfloor, and hardwood flooring; removing and replacing siding, flashing, and glass in the family room window; replacing the electric water heater; removing and replacing broken tile in the basement bathroom; scraping loose paint on the front porch; painting the front porch and stairs; removing and replacing porch columns; and reinstalling the existing level railings.

The Respondent failed to appear for the November 3, 2021 hearing and did not present any witnesses or testimony to rebut the Claimant's case. Thus, the evidence is undisputed. Accordingly, I find that the Claimant is eligible for compensation from the Fund based on an incomplete home improvement by the Respondent.

The Claimant did not present photographs of the work performed by the Respondent nor present expert testimony to establish any deficiencies in the work completed by the Respondent. Accordingly, I do not find an actual loss as the result of an inadequate or unworkmanlike home improvement.

Compensation from the Fund

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. She requested an award in the amount of $7,885.00, which represented the difference in the amount she paid to the Respondent and the estimated value of the work performed by the Respondent at the time he stopped working.[7]

The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work:

> (a) If the contractor abandoned the contract without doing any work, the claimant's actual loss shall be the amount which the claimant paid to the contractor under the contract.
>
> (b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.
>
> (c) If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(a)-(c).

None of the three regulatory formulas is appropriate in this case. The Respondent did not abandon the contract without doing any work, so that formula is inapplicable. COMAR

[7] The Claimant credited the Respondent with completing all drywall work and rebuilding the stairs and used the itemized estimates provided by Mr. Zinn to establish a value for the completed work in the amount of $2,100.00 ($600.00 (drywall) + $1,500.00 (rebuild steps) = $2,100.00).

09.08.03.03B(3)(a). The Claimant hired other contractors to complete or remedy the Respondent's work, so the formula in which a claimant is not soliciting another contractor to complete the contract is also not applicable. COMAR 09.08.03.03B(3)(b). While the Respondent performed some work under the Contract and the Claimant has retained other contractors to complete that work, I conclude that COMAR 09.08.03.03B(3)(c) fails to appropriately measure the Claimant's actual loss because the contractors who were hired by the Claimant to complete the renovation performed additional work outside the scope of the Contract, but did not separate out the costs to complete the Respondent's remaining work under the Contract. As such, a calculation under COMAR 09.08.03.03B(3)(c) would not appropriately establish the Claimant's actual loss. Accordingly, I find the appropriate measure of the Claimant's compensable actual loss to be $7,885.00, the amount paid to the Respondent, less the estimated value for completion of the front porch stairs and drywall work ($9,985.00 - $2,100.00 = $7,885.00).[8]

The Business Regulation Article caps a claimant's recovery at $20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss is less than the amount paid to the Respondent and less than $20,000.00. Therefore, the Claimant is entitled to recover her actual loss of $7,885.00.

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of $7,885.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405

[8] At the hearing, Mr. Brouwer agreed that the evidence supported the Claimant's claim of eligibility for an award in the amount of $7,885.00.

(2015); COMAR 09.08.03.03B(3). I further conclude that the Claimant is entitled to recover that amount from the Fund. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5) (2015); COMAR 09.08.03.03B(3); COMAR 09.08.03.03D(2)(a).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant $7,885.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;[9] and

ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

Michelle W. Cole

January 31, 2022
Date Decision Issued

Michelle W. Cole
Administrative Law Judge

MWC/dlm
#196500

[9] *See* Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

PROPOSED ORDER

WHEREFORE, this 23rd day of May, 2022, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Heather Connellee

Heather Connellee
Panel B
MARYLAND HOME IMPROVEMENT COMMISSION